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Date: July 20, 2004

To: Name/Company	Fax No.	Phone No.
Examiner Garg United States Patent and Trademark Office	703 872 9306	

From: Kurt M. Eaton
Phone: (619) 595-8039
Re: U.S. Patent Application No. 09/373,576

Number of Pages (including cover):

22

COMMENTS

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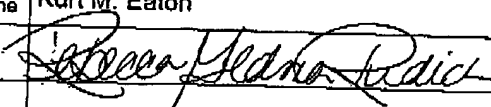
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PTO/SB/21 (08-03)
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<h2 style="margin: 0;">TRANSMITTAL FORM</h2> <p style="margin: 5px 0;">(to be used for all correspondence after initial filing)</p>		Application Number	09/373,576
		Filing Date	August 13, 1999
		First Named Inventor	J. K. Kelly
		Art Unit	3625
		Examiner Name	Y. C. Garg
		Attorney Docket Number	6945.035.00
Total Number of Pages in This Submission		1	

ENCLOSURES (Check all that apply)		
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Firm or Individual name	Kurt M. Eaton
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PATENT
6945.035.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re application of

Confirmation No: 2727

J. K. KELLY, et al.

Group Art Unit: 3625

Application No.: 09/373,576

Examiner: Y. GARG

Filed: August 13, 1999

Customer No.: 30827

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For: GARDEN AND AGRICULTURAL MATERIAL IDENTIFICATION
METHOD AND APPARATUSSUPPLEMENTAL APPELLANT'S BRIEFMail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to a Final Rejection of all pending claims that was mailed on October 7, 2003, and an Advisory Action that was mailed on February 19, 2004, and in support of a "Notice of Appeal" filed on March 3, 2004, Appellant hereby submits this Appeal Brief.

The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate.

This brief contains items under the following headings as required by 37 C.F.R. § 1.192 and M.P.E.P. § 1206:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims

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- IV. Status of Amendments
- V. Summary of Invention
- VI. Issues
- VII. Grouping of Claims
- VIII. Arguments
- IX. Claims Involved in the Appeal

Appendix A Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

GARDENING123.COM, INC.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Total Number of Claims in the Application

There are 29 claims pending in the application.

Current Status of Claims

Claims canceled: 17

Claims withdrawn from consideration but not canceled: N/A

Claims pending: 1-16 and 18-30

Claims allowed: N/A

Claims rejected: 1-16 and 18-30

Claims On Appeal: The claims on appeal are claims 1-16 and 18-30.

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IV. STATUS OF AMENDMENTS

In a Preliminary Amendment filed with a Request for Continued Examination on January 10, 2003, claims 1-16 and 18-25 were amended, claim 17 was canceled, and claims 26-30 were added. The Examiner issued a Final Rejection on October 7, 2003, based on the claims presented as of January 10, 2003. The claims were not amended after the Final Rejection.

Accordingly, the claims enclosed herein as Appendix A reflect the amended claims 1-16 and 18-25 and claims 26-30, added in the amendment filed January 10, 2003.

V. SUMMARY OF INVENTION

The present invention relates generally to the field of gardening and agriculture and more particularly to a method and apparatus for identifying an appropriate gardening or agricultural material based on responses to user queries (see specification at, for example, page 7, lines 15-17). The queries allow a gardener to specify the type of area (e.g., lawn, garden, etc.) in which a problem exists (see specification at, for example, page 5, lines 8-10); the type of problem (e.g., insect, fungus, characteristics of the problem, etc.) (see specification at, for example, page 5, lines 10-11, 16-20); and the geographic location of the problem (see specification at, for example, page 5, lines 4-8). The geographic location may be specified by zip code, state, region of the country, or any combination thereof (see specification at, for example, page 7, lines 4-14). The ability to specify geographic location by state is especially helpful when choosing gardening materials such as pesticides, fertilizers and lawn seeds because such materials are regulated by state. A pesticide that is legal in one state may not be legal in the next. Even if a pesticide is legal in a state, it may not be legal

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for all applications. Specifying a location by both state and region is useful for large states with relatively large climactic variation.

Once the appropriate user responses have been obtained, appropriate garden materials are identified to the user.

VI. ISSUES

The first issue is whether the Examiner properly rejected claims 1, 2, 4, 8-11, 13-15, 21-24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. (U.S. Pat. No. 6,477,531) in view of Gerland et al. ("Taking A Spade To The Web") and National Gardening ("National Gardening Association Home Page", extracted from the Internet on 1/16/02).

The second issue is whether the Examiner properly rejected claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

The third issue is whether the Examiner properly rejected claims 5-7, 18-20, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al. (U.S. Pat. No. 5,726,884).

The fourth issue is whether the Examiner properly rejected claims 12 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

The fifth issue is whether the Examiner properly rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al., National Gardening, and an "Official Notice".

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VII. GROUPING OF CLAIMS

For purposes of this appeal brief only, and without conceding the teachings of any prior art reference, the claims have been grouped as indicated below:

Group/Claim(s)

- A. Independent claim 1, and claims 2-12 which depend from claim 1;
- B. Independent claim 13, and claims 14-16 and 18-25, which depend from claim 13; and
- C. Independent claim 26, and claims 27-30, which depend from claim 26.

It is respectfully submitted that the claims of groups A, B, and C stand or fall together.

VIII. ARGUMENTS

- A. The Examiner improperly rejected claims 1, 2, 4, 8-11, 13-15, 21-24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

Independent claim 1 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 1 recites a combination of elements including, for example, "querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying."